



FEDERAL ELECTION COMMISSION  
Washington, DC 20002

**VIA ELECTRONIC AND FIRST CLASS MAIL**

Charles R. Spies  
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Washington, DC 20004  
Cspies@clarkhill.com

OCT 22 2018

RE: MUR 7122  
Right to Rise USA

Dear Mr. Spies:

On August 15, 2016, the Federal Election Commission (the "Commission") notified Right to Rise USA and you, in your official capacity as treasurer (the "Committee"), of a complaint indicating that the Committee may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"), and provided you with a copy of the complaint. On August 28, 2018, the Office of General Counsel notified the Committee of additional information obtained by the Commission.

After reviewing the allegations contained in the complaint, your responses, and available information, the Commission, on October 11, 2018, found reason to believe that Right to Rise USA and you, in your official capacity as treasurer, violated 52 U.S.C. § 30121(a)(2), a provision of the Act, and 11 C.F.R. § 110.20(g), a provision of the Act's implementing regulations. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is enclosed for your information.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to you as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that you violated the law. Enclosed is a conciliation agreement for your consideration.



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Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at <http://www.fec.gov/respondent.guide.pdf>.

Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.<sup>1</sup>

This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. We look forward to your response.

On behalf of the Commission,

A handwritten signature in black ink, appearing to read "Caroline C. Hunter", is written over a horizontal line.

Caroline C. Hunter  
Chair

Enclosures

Factual and Legal Analysis

<sup>1</sup> The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENTS:** Right to Rise USA and Charlie Spies MUR 7122  
in his official capacity as treasurer

**I. INTRODUCTION**

The Complaint alleges that Gordon Tang ("Tang"), Huaidan Chen, Wilson Chen, and American Pacific International Capital, Inc. ("APIC"), a United States subsidiary of a foreign corporation, violated Section 30121 of the Federal Election Campaign Act of 1971, as amended (the "Act"). The Complaint bases its allegation on an assertion that foreign nationals Tang and Huaidan Chen, participated in APIC's decision to contribute to Right to Rise USA and Charles Spies in his official capacity as treasurer ("Right to Rise USA"). The Complaint also alleges that Right to Rise USA accepted contributions from APIC after Tang and Huaidan Chen's participation.

Because the evidence in the record indicates that Right to Rise USA, acting through an agent, may have knowingly solicited and accepted contributions from a foreign national, the Commission finds reason to believe that Right to Rise USA violated 52 U.S.C. § 30121(a)(2) and 11 C.F.R. § 110.20(g).

**II. FACTUAL AND LEGAL ANALYSIS**

**A. Factual Background**

Right to Rise USA is an independent expenditure-only committee that supported Jeb Bush's 2016 presidential campaign.<sup>1</sup> APIC is a privately held California corporation owned by

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<sup>1</sup> See <https://www.facebook.com/RighttoRiseUSA/>.

1 Jag Pacific, Ltd., a foreign corporation. APIC describes itself as a “diversified international  
2 investment holding company with businesses throughout the US and China.”<sup>2</sup> Tang and his wife  
3 Huaidan Chen are Chinese nationals who own a majority interest in Jag Pacific, Ltd. According  
4 to APIC’s website, Tang is the Chairman/President of APIC’s corporate board, and Huaidan  
5 Chen is a board member.<sup>3</sup> Wilson Chen, a United States citizen, is the Executive Director of  
6 APIC and also sits on its board.<sup>4</sup> Wilson Chen oversees APIC’s United States operations.

7 The Complaint’s allegation stems from two contributions that APIC made to Right to  
8 Rise USA: \$1,000,000 on March 26, 2015, and \$300,000 on June 29, 2015.<sup>5</sup> The Complaint  
9 cites to an article from the online publication *The Intercept*, quoting statements made by Wilson  
10 Chen and Tang regarding the contributions. The relevant portion of that article states:

11 According to Chen, ‘I proposed to make a donation to the Republican  
12 Party and then let the board of directors approve it before sending the  
13 donation.’ APIC’s board includes Chen himself and Neil Bush, both  
14 U.S. citizens, but also Chinese citizens Tang and Huaidan Chen. For  
15 Tang’s part, when asked why APIC made the donation to Right to Rise  
16 USA, he responded: ‘Wilson said to donate, so I did, I don’t really  
17 mind.’<sup>6</sup>

18 Right to Rise USA asserts that the Commission did not have the authority to name it as a  
19 respondent when it was not originally identified as one in the Complaint and that, in any event,  
20 no allegations have been made against it that constitute a violation of the Act.<sup>7</sup>

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<sup>2</sup> See <http://www.apicincus.com/>.

<sup>3</sup> See <http://www.apicincus.com/>.

<sup>4</sup> According to the Complaint, the board also includes Neil Bush, a United States citizen, and Jinshan Mao, the board’s Vice President, whose nationality is not stated in the record. Compl. at 4.

<sup>5</sup> Compl. at 4, see also Right to Rise USA 2015 Amended Mid-Year Report at 837, 1,400 (May 20, 2016). Right to Rise USA refunded \$152,230 to APIC on May 2, 2016. See Right to Rise USA 2016 June Monthly Report at 682 (June 20, 2016).

<sup>6</sup> *Id.* APIC claims this was an inaccurate translation, and that Tang actually said “‘Wilson said to donate, so it was done’ (by Wilson using APIC funds).”

<sup>7</sup> Right to Rise USA Response at 1-2 (Aug. 30, 2016).

1 The information in the record indicates that Neil Bush, the brother of Jeb Bush and a  
2 member of APIC's board of directors, first contacted Wilson Chen by telephone in early 2015 to  
3 ask whether APIC would contribute to Right to Rise USA. Neil Bush states that Wilson Chen  
4 responded that he had some interest. During the weekend of February 6, 2015, Neil Bush and  
5 Tang both attended the board of directors meeting for SingHaiyi, a company that Tang and  
6 Huaidan Chen own a majority interest in.<sup>8</sup> Sometime during that weekend Neil Bush and  
7 Gordon Tang discussed the subject of APIC contributing to Right to Rise USA during a private  
8 meeting between the two men, and Neil Bush told Tang that he was going to solicit Wilson Chen  
9 for a contribution. Tang told Neil Bush that APIC might be interested in contributing if it could  
10 do so legally.

11 On February 21, 2015, Neil Bush sent an email to Huaidan Chen (who is also known as  
12 Serena Tang) and Wilson Chen,<sup>9</sup> which states:

13 Serena and Winston,

14 When I was with Gordon [Tang] he expressed interest in donating  
15 legally through APIC to my brother Jeb's political action  
16 committee (PAC). I've asked the council [sic] for the PAC to send  
17 info for qualifications. Please check to see if APIC qualifies as a  
18 prospective donor. If Gordon wants to make a donation you ought  
19 to pass this by your legal counsel as well to be sure everything is  
20 done properly.

21  
22 Thanks for your interest in helping my brother and thanks for  
23 wanting to do it according to the strict rules and regulations in the  
24 USA regarding these matters.  
25

<sup>8</sup> While SingHaiyi does business with APIC, the two companies are separate entities. Neil Bush also serves as the Chairman of SingHaiyi's board of directors.

<sup>9</sup> Neil Bush's initial email was actually sent to Huaidan Chen and Winston Chen; Winston Chen is a Vice President at APIC and United States citizen. The email was intended for Wilson Chen and Neil Bush sent the email to Winston Chen in error. When Huaidan Chen responded to Neil Bush's email, she added Wilson Chen as a recipient and removed Winston Chen.

1 The email included a legal memorandum from Right to Rise USA's counsel that outlined the  
2 contribution rules for domestic subsidiaries of foreign corporations, and that memorandum  
3 explained that foreign nationals cannot participate in a domestic subsidiary's decision to make a  
4 political contribution.

5 Huiadan Chen, responded to this message on the same day with an email to Wilson Chen  
6 that said "[h]i Wilson, Gordon wants you to follow up this matter. Pls check with Ashlee and  
7 contact him by phone. Thanks, Serena." Neil Bush was copied on this email. Gordon Tang  
8 explained during his interview that, after thinking on the issue, he had instructed Huaidan Chen  
9 to send the email that instructed Wilson Chen to follow up on the matter. Wilson Chen  
10 responded with an email that stated "Will do. Thank you! Wilson." Neil Bush also was copied  
11 on this email.

12 Wilson Chen later emailed Neil Bush and Right to Rise USA's legal counsel, and advised  
13 that he had read the aforementioned memorandum, consulted a "legal/political advisor," and  
14 concluded that APIC was qualified to contribute as a United States company. In April 2015,  
15 Right to Rise USA's counsel inquired as to Wilson Chen's nationality, and Wilson Chen stated  
16 that he was a United States citizen.

#### 17 **B. Legal Analysis**

18 The Act prohibits persons from soliciting, accepting, or receiving a contribution or  
19 donation from a foreign national.<sup>10</sup> Commission regulations state that persons may not  
20 knowingly solicit, accept, or receive such contributions or donations.<sup>11</sup> Commission regulations  
21 define "knowingly" as (i) having actual knowledge that funds originated from a foreign national,

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<sup>10</sup> 52 U.S.C. § 30121(a)(2).

<sup>11</sup> 11 C.F.R. § 110.20(g).

1 (ii) being aware of facts that would lead a reasonable person to conclude that there is a  
2 substantial probability that the source of the funds is a foreign national, or (iii) being aware of  
3 facts that would lead a reasonable person to inquire whether the source of the funds is a foreign  
4 national but failed to conduct a reasonable inquiry.<sup>12</sup>

5 APIC has stated that its contributions to Right to Rise USA emanated from the net  
6 proceeds of a sale of a domestic asset and that Executive Director, Wilson Chen, a U.S. citizen,  
7 maintained and exercised sole discretion regarding all political contributions. The record,  
8 however, indicates that Neil Bush had a conversation with Tang, a foreign national, regarding the  
9 subject of APIC contributing to Right to Rise USA. The record also indicates that Neil Bush  
10 may have been acting as an agent of Right to Rise USA.<sup>13</sup> After his conversation with Tang,  
11 Neil Bush sent an email to Huaidan Chen and an address he thought was Wilson Chen's stating,  
12 "[w]hen I was with Gordon he expressed interest in donating legally through APIC." Neil Bush  
13 also said that, "[i]f *Gordon wants to make a donation* you [Wilson Chen] ought to pass this by  
14 your legal counsel as well to be sure everything is done properly." (emphasis added) Huaidan  
15 Chen forwarded this email to Wilson Chen instructing him that "Gordon wants you to follow up  
16 this matter." Wilson Chen responded with an email in which he agreed to follow up, copying  
17 Neil Bush.

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<sup>12</sup> *Id.* § 110.20(a)(4); *see also* Contribution Limitations and Prohibitions, 67 Fed. Reg. 69928, 69941 (Nov. 19, 2002) ("The final rules at 11 C.F.R. § 110.20(a)(4) . . . contain three standards of knowledge . . . [which] focus on the source of the funds at issue.").

<sup>13</sup> An agent is defined as any person who has actual authority, either express or implied, to solicit, direct, or receive any contribution. *See* 11 C.F.R. § 300.2(b). Right to Rise provided the aforementioned memorandum to its agents and other fundraisers outlining the contributions rules for a domestic subsidiary of a foreign corporation; when providing the memorandum to Neil Bush, Spies also said to let him know what additional information would be helpful. Neil Bush has characterized himself as a "volunteer."

1 The record also indicates that Neil Bush may have known that Tang and Huaidan Chen  
2 were foreign nationals. Neil Bush serves as the Chairman of SingHaiyi's board of directors,  
3 which includes Tang (who does not speak English), and has served on the board of directors of  
4 APIC with Tang and Huaidan Chen since 2011. Neil Bush sent Huaidan Chen (as well as the  
5 person he believed to be Wilson Chen) a legal memorandum stating that, even for a "Super  
6 PAC," a "domestic subsidiary corporation must still comply with the restrictions on foreign  
7 national funds and participation"<sup>14</sup> while simultaneously referencing the prior conversation  
8 with Tang and thus, the record indicates that funds may have been solicited from Gordon Tang  
9 by an agent of Right to Rise USA.

10 Accordingly, the Commission finds reason to believe that Right to Rise USA violated 52  
11 U.S.C. § 30121(a)(2) and 11 C.F.R. § 110.20(g).

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<sup>14</sup> (emphasis in original).